

Discussed – June 18, 2019
Public Hearing – n/a
Introduced – June 18, 2019 - Commissioners Bibb and Boos
Adopted -
Effective -

ORDINANCE NO. 500

AN ORDINANCE TO ENACT A NEW CHAPTER A350, ARTICLE IV OF THE CODE OF THE TOWN OF ST. MICHAELS ENTITLED “SMALL WIRELESS FACILITIES” TO PROVIDE FOR THE PERMITTING AND LOCATION OF SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES IN, UPON, OR OVER THE SIDEWALKS AND PUBLIC WAYS OF THE TOWN OF ST. MICHAELS AND DEFINING TERMS ASSOCIATED THEREWITH; PROVIDING THAT THE TITLE OF THIS SUMMARY SHALL BE DEEMED A FAIR SUMMARY AND GENERALLY RELATING TO SMALL WIRELESS FACILITIES IN THE TOWN OF ST. MICHAELS.

WHEREAS, pursuant to Md. Code Ann., Local Gov’t § 5-202 and § C-19(A) of the Charter of the Town of St. Michaels, the Commissioners of St. Michaels (the “Commissioners”) are authorized and empowered to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as they may deem necessary for the good government of the Town of St. Michaels (the “Town”); for the protection and preservation of the City's property, rights, and privileges; for the preservation of peace and good order; to secure persons and property from violence, danger, or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of and visitors in the Town; and

WHEREAS, pursuant to Md. Code Ann., Local Gov’t § 5-205(d)(1)(i) and § C-19(B)(23) of the Charter, the Commissioners are authorized and empowered to establish and collect reasonable fees and charges for franchises, permits, or licenses granted by the Town and to grant and regulate franchises; and

WHEREAS, the Town’s sidewalks and public ways contain a finite amount of space; therefore, they cannot safely and responsibly accommodate the installation of an unlimited amount of utility and communications facilities and infrastructure; and

WHEREAS, the Commissioners have a legitimate interest in ensuring that third parties proposing to install, construct, and maintain such facilities and infrastructure in, upon, or over the City’s sidewalks and public ways do so responsibly, without interfering with existing facilities and infrastructure, without imposing a burden or safety risk upon pedestrian or vehicular traffic, without a substantially detrimental impact on abutting properties, and without imposing a burden on the Town and its taxpayers for the costs of restoration of disturbed areas; and

WHEREAS, pursuant to federal law, including, but not limited to Sections 253 and 332 of the Communications Act (47 U.S.C. §§ 253 and 332), local governments are authorized to control the placement, construction, and modification of personal/small wireless facilities and manage the use of public rights-of-way and may require fair and reasonable compensation for such use, but may not prohibit any entity's ability to provide personal wireless service or other telecommunications service or unreasonably discriminate among providers of functionally equivalent services; and

WHEREAS, the Commissioners desire to accommodate the safe, non-burdensome, and efficient deployment of small wireless facilities and support structures in, upon, and over the Town's sidewalks and public ways in compliance with federal, State, and local law; and

WHEREAS, the Commissioners are desirous of enacting a new Chapter A350, Article IV entitled "Small Wireless Facilities" of the Code of the Town of St. Michaels to provide for the permitting and location of small wireless facilities and support structures in, upon, or over the sidewalks and public ways of the Town and defining terms associated therewith; and

WHEREAS, the Commissioners deem it in the interest of the public health, welfare, and safety of the citizens of the Town, and for the good government of the Town, to enact this Ordinance and to take the actions as described herein.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that a new Chapter A350, Article IV entitled "Small Wireless Facilities" of the Code of the Town of St. Michaels is hereby enacted to read as follows:

CHAPTER A350. FRANCHISE AGREEMENTS
ARTICLE IV. SMALL WIRELESS FACILITIES

§ A350-46. Defined terms.

A. Small wireless facility. As used in this section, "small wireless facility" means and refers to:

- (1) "Small cells," which are low-powered wireless base stations that function like traditional cell sites in a mobile wireless network but typically cover targeted indoor or localized outdoor areas;**
- (2) "DAS" or "distributed antenna systems," which use numerous antennae, commonly known as "nodes," similar in size to small cells and are connected to and controlled by a central hub; and**

(3) Other similar facilities, systems or devices designed to facilitate a mobile wireless network within a localized area and to be attached to a support structure within sidewalks or public ways or on private property.

B. Support structure. As used in this section, “support structure” means and refers to any light pole, utility pole, building wall, rooftop or other structure upon which a small wireless facility is attached.

§ A350-47. Application for permit.

A. Any person desiring to install a small wireless facility, including any support structure, in, upon or over any Town sidewalk or public ways shall first obtain a permit from the Commissioners in accordance with this section. Applicants for small wireless facilities to be located on a new support structure in, upon or over a Town sidewalk or public way shall not be issued a permit until and unless the applicant and the Commissioners have negotiated and executed a franchise agreement setting forth the terms and conditions for the applicant’s use of the Town’s sidewalks and/or public ways, including fair compensation to the Town for such use and, if applicable, lease payments for the use of any Town-owned support structures.

B. In addition to the other information required by this section, an applicant for a permit hereunder shall provide the following information:

(1) A technical description of the small wireless facility and support structure along with detailed diagrams accurately depicting all components and equipment;

(2) A detailed description of the design, location and installation timeframe for the small wireless facility and support structure;

(3) An engineering certification;

(4) A statement describing the applicant’s intentions with respect to collocation, with collocation being preferred and more favorably viewed;

(5) A statement demonstrating the applicant’s ability to comply with all applicable safety standards;

(6) In the case of a proposed attachment to a Town-owned support structure located in, upon or over a Town sidewalk or public way, an executed attachment agreement with the Town;

(7) In the case of a proposed attachment to a privately-owned support structure located in, upon or over a Town sidewalk or public way, an executed attachment agreement with the support structure’s owner;

(8) A decommissioning plan; and

(9) Such other information as the Commissioners may require.

C. The applicant shall pay an application fee to the Town upon applying to install a small wireless facility in accordance with this Article, in addition to any other fees required by any other provision of the Code of the Town of St. Michaels and in an amount to be specified and amended from time to time by resolution of the Commissioners.

§ A350-48. Requirements and findings.

A. Small wireless facilities and support structures proposed to be located in, upon or over Town sidewalks or public ways shall meet the following requirements:

(1) Small wireless facilities shall only be installed on existing support structures, preferably light poles or utility poles, unless otherwise approved by the Commissioners, in their sole discretion.

(2) Any new or replacement support structure installed in, upon or over any Town sidewalk or public way shall:

(a) Comply with all applicable structural and safety standards;

(b) Not obstruct pedestrian or vehicular flow or sight lines;

(c) Including any antennae or other appurtenances, not exceed the average height of the existing street light poles or utility poles within the area extending five hundred (500) feet in any direction from the proposed support structure;

(d) Be designed to accommodate the collocation of at least one (1) other wireless provider's small wireless facility, to the extent technologically feasible;

(e) If metal, be treated or painted with non-reflective paint, and in a way to conform to or blend in with the surroundings; and

(f) Comply with such other requirements and conditions as the Commissioners may deem appropriate to impose.

(3) Small wireless facilities and support structures shall be located, designed and operated in accordance with all applicable laws and regulations and to minimize visual impact on surrounding properties and from sidewalks and public ways to the maximum extent practicable and shall otherwise comply with such requirements and conditions as the Commissioners may deem appropriate to impose;

(4) The proposed location shall not be in an area where there is an over-concentration of small wireless facilities or support structures in, upon or over Town sidewalks or public ways;

- (5) The location selected and the scale and appearance of the small wireless facility and support structure to be installed shall be consistent with the general character of the neighborhood;
- (6) If located in the Historic District, the small wireless facility and support structure shall be subject to Historic District Commission review and approval;
- (7) A small wireless facility and/or support structure shall be lighted only if required by the Federal Aviation Administration, and lighting of equipment shelters and other facilities on site shall be shielded from other properties;
- (8) The applicant shall provide insurance, bonding and indemnification, in a form and amount acceptable to the Commissioners, to protect the Town and its officials and residents from injury or liability relating to or arising from the proposed small wireless facility and support structure;
- (9) For small wireless facilities to be located on a new support structure in, upon or over a Town sidewalk or public way, the applicant has entered into a franchise agreement with the Town as required by this Article; and
- (10) The small wireless facility, if located in a residential area, does not generate any noise.

B. The small wireless facility and support structure shall be used continuously for wireless communications. In the event the small wireless facility and support structure cease to be so used for a period of six (6) months, the Commissioners may revoke any permit granted pursuant to this Article. The permit holder shall be responsible for removing the small wireless facility and support structure within forty-five (45) days following such revocation. Any portion of the small wireless facility and/or support structure which has not been removed within forty-five (45) days following such revocation shall be considered abandoned and may be removed and disposed of by the Town, with all such costs to be the permit holder's sole responsibility.

§ A350-49. Exceptions.

The Commissioners shall not issue any permit for a small wireless facility when, in their sole judgment, sufficient capacity no longer exists for additional small wireless facilities to be placed in the proposed location without jeopardizing the physical integrity of other small wireless facilities, support structures or other utilities already present in the proposed location or the safe and efficient vehicular or pedestrian use of the sidewalk or public way.

§ A350-50. Permit limitations.

Nothing in this Article shall affect or limit the Town's right to charge a separate fee for access to or for the use of Town property, facilities, sidewalks or public ways. Any permit granted pursuant to this section shall be in addition to and not in lieu of any other fee, rent, lease,

license or franchise required to occupy or place facilities in or on Town property, facilities, sidewalks or public ways.

The foregoing Recitals are incorporated by reference herein and made a substantive part of the findings of fact set forth below.

SECTION 2. The recitals to this Ordinance are incorporated herein and deemed a substantive part of this Ordinance.

SECTION 3. In this Ordinance, unless a section of the Town Code is expressly repealed in its entirety and reenacted, new or added language is underlined and in boldface type, and deleted text is crossed out with a single strikethrough. With respect to the substantive provisions of this Ordinance set forth in Section 1, language added after the date of introduction is in bold, italicized font and language deleted after the date of introduction is crossed out with a double strikethrough.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance, it being the intent of the Commissioners of St. Michaels that this Ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

SECTION 5. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 6. The title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

SECTION 7. This Ordinance shall take effect twenty (20) days from the date of its enactment, having been read at two (2) meetings of the Commissioners of St. Michaels and having been passed by a ye and nay vote of the Commissioners of St. Michaels.

HAVING BEEN INTRODUCED, read for the first time and ordered posted on the Town bulletin board at the Public Meeting of the Commissioners of St. Michaels held on this ___ day of _____, 2019, at 6 o'clock p.m., in the meeting room at the Edgar M. Bosley, Jr. Municipal Building (Town Office), St. Michaels, Maryland.

_____(SEAL)
Jean R. Weisman
Town Clerk\Manager

HAVING BEEN READ for the second time and passed by a yea and nay vote of The Commissioners of St. Michaels at a Public Hearing of The Commissioners of St. Michaels held on this ___ day of _____, 2019, at 6 o'clock p.m., in the meeting room at the Edgar M. Bosley, Jr. Municipal Building (Town Office), St. Michaels, Maryland.

Boos	-	_____
Bibb	-	_____
Harrod	-	_____
Windon	-	_____
Glackin	-	_____

I HEREBY CERTIFY that this Ordinance was passed by a yea and nay vote of The Commissioners of St. Michaels on the ___ day of _____, 2019 , and that the Exhibits attached hereto are true copies of the Exhibits referred to in this Ordinance.

ATTEST: THE COMMISSIONERS OF ST. MICHAELS

_____	BY: _____(SEAL)
Jean R. Weisman, Town Clerk\Manager	William E. Boos, President

I HEREBY CERTIFY that an exact copy of the above Ordinance was posted from the _____day of _____, 2019, at 8:30 o'clock a.m. to the _____day of _____, 2019, at 4:30 o'clock p.m., on the bulletin board at the Town Office in St. Michaels, Maryland, and that a summary of the above Ordinance, the date of its passage, its effective date and the fact that the entire text of the Ordinance may be read on the bulletin board of the Town Office, St. Michaels, Maryland, for at least twenty (20) days following the passage, has been published at least once each week for three (3) consecutive weeks following the passage of said Ordinance in a newspaper having general circulation in the Town of St. Michaels.

Date: _____, 2019	_____ (SEAL)
	Jean R. Weisman, Town Clerk\Manager